# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 02

**CUSTOMS Appeal No. 12011 of 2014-SM**

[Arising out of Order-in-Original/Appeal No 125-134-2014-CUS-COMMR-A--JMR dated 25.04.2014 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV)]

**Diamond Industries Sbd** **...Appellant**
C/O, M/S, V B Sheth & Co,
Near Moti Tanki, Dr, Radhakrishna Road,
Rajkot,
Gujarat

*VERSUS*

**C.C.-Jamnagar(prev)** **...Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar,
Gujarat

**APPEARANCE**:
Shri Rahul Gajera, Advocate for the Appellant
Shri. Sanjay Kumar, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), SOMESH ARORA**

**FINAL ORDER NO.A / 11842 /2023**

DATE OF HEARING:31.08.2023
DATE OF DECISION: 31.08.2023

**SOMESH ARORA**

The issue in the instant case pertains to the product Marine Gas Oil (MGO), which is stated to be brought in as ship fuel, while importing a ship for breaking. As per circular of CBEC opinion was conveyed that the procurement even if along with ship and coming as a fuel will require ITC. However, clarification issued by the Joint DGFT under Foreign Trade Policy directed that the surplus fuel will have to be considered as part of the ship under Tariff Heading 89.08 as per clarification given by DGFT under F. No. IPC/4/5(684)/97/82/PC-2(A), dated 26.06.2013, it also indicated that such MGO with HSD and coming with vessel as fuel is free without any restriction.

2. This court finds that issue as brought out by the Learned Advocate and having been fairly commented as covering the issue, by the Learned, the matter is no more *rest integra* and is covered by the decision in the matter reported in 2014 (8) TMI 44 (CESTAT -Ahmd.), in the matter of M/s. A G Enterprise and ors. Vs. CC (Preventive) Jamnagar, as also by the order of Hon'ble Supreme court as reported in 2015 (11) TMI 79- 2015 (322) ELT A326, (SC) in the matter of Commr Vs. M K Shipping and Allied Industries P Ltd. decided on 31.07.2015 in favour of appellant. This court is therefore inclined to follow the same.

3. Appeal is therefore allowed with consequential relief.

*(Dictated & Pronounced in the open Court)*

**(SOMESH ARORA)**
**MEMBER (JUDICIAL)**

PALAK